

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2000 Oak Drive)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Gonzalez Eliseo,	*	HEARINGS FOR
<i>Legal Owner</i>		
Rolando Morales,	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2020-0033-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by on behalf of Gonzalez Eliseo, legal owner of the subject property, and Rolando Morales, contract purchaser, (“Petitioners”). Petitioners are requesting variance relief from §§ 1B02.3.C.1 and 104.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit an extension/addition of a non-conforming residential structure which will have a 17 ft. 6 in. setback in lieu of the required 25 ft. side setback for a corner lot. A site plan was marked as Petitioners’ Exhibit 1.

Beverly Eisenberg, AIA, appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A ZAC comment was received from the Department of Planning (“DOP”) dated March 5, 2020, indicating it had no objection to the request but suggested conditions relating to the Baltimore County Rental Housing registration. The property is currently being used as a residential rental; however, the Plan does not indicate the number of rental units. Between 2005 and 2019, the property has had numerous code violation cases marked as closed, no violation or in compliance by the Division of Code Enforcement.

The site is approximately 17,200 sq. ft. in size and zoned DR 5.5.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Ms. Eisenberg explained that the existing structure, which was built in 1942 – prior to the BCZR- has non-conforming setbacks, as do the other homes in the immediate vicinity. The property is therefore unique. The Petitioner, Mr. Morales, testified that he has three children and needs to build this proposed addition in order to adequately house his family. The setbacks for the proposed addition will be the same as those of the existing structure. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to build this proposed addition. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. The DOP was concerned that the proper residential rental license be obtained for this property. However, Mr. Morales testified that although he is currently leasing the residence he has an option to purchase the property which is contingent on obtaining the subject variance. Once this sale is consummated this will be his family’s primary residence. Accordingly, the DOP’s concerns are moot.

THEREFORE, IT IS ORDERED, this **25th** day of **June, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from Baltimore County Zoning Regulations pursuant to §§ 1B02.3.C.1 and 104.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit an extension/addition of a non-conforming residential structure which will

have a 17 ft. 6 in. setback in lieu of the required 25 ft. side setback for a corner lot, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlw